Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

LINDA LOU STEM and CARROLL LYNN SCHISLER, SR.,

Petitioners,

v.

IN THE MATTER OF:
THE ESTATE OF LUCILLE ANNETTA SCHISLER,

IRIS EDWARDS WIX,
DONALD EDWARD SCHISLER,
RALPH TRUMAN SCHISLER, and
AUGUST FREDERICK SCHISLER

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF TENNESSEE AT NASHVILLE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Did the Tennessee Supreme Court fail in applying in its application of due process to the Petitioner on evidence of motive upon allowing evidence of motive to be used where such showing occurred without an opportunity for an evidentiary hearing?

2) Did the Tennessee Supreme Court err in upholding evidence deemed prejudicial for the limited purpose of showing character where such evidence occurred without the Petitioner's participation in an evidentiary hearing?

List of Parties

1) IRIS EDWARDS WIX, Plaintiff and Respondent;

2) DONALD EDWARD SCHISLER Plaintiff and Respondent;

3) RALPH TRUMAN SCHISLER Plaintiff and Respondent;

4) AUGUST FREDERICK SCHISLER Plaintiff and; Respondent

5) LINDA LOU STEM, Defendant and Petitioner; and

6) CARROLL LYNN SCHISLER, Defendant and Petitioner.

TABLE OF CONTENTS

Questions Presented i

List of Parties ii

Table of Contents iii

Table of Authorities iv

Opinions Below 1

Jurisdiction 1

Constitutional Provisions and Statutes 2

Statement of the Case 4

A. Facts giving rise to this case 4

B. Chancery Court Proceedings 9

C. Tennessee Court of Appeals 10

Reasons for Granting Petition 10

I. Review is warranted because the The Tennessee Supreme Court refused to review the fairness of allowing prejudicial evidence of Petitioner's criminal convictions, as guaranteed by the due process clause of the 14th Amendment 10

Conclusion 13

TABLE OF AUTHORITIES

CASES

Brown v. Weik, 725 S.W.2d 938, 945 (Tenn.Ct.App 1983) 6

Fuentes v. Shevin, 407 U.S. 67, 82 (1972) 11

Gordon v. Thornton, 584 S.W.2d 655, 658 (Tenn.Ct.App. 1979) 6

In re Estate of Price, 273 S.W.3d 113, 125 (Tenn.Ct.App. 2008) 6

In re Estate of Turner, 2205 Tenn.App.LEXIS 552, at * 8 (Tenn.Ct App.Aug. 30, 2005) 6

Matlock v. Simpson, 902 S.W.2d 384 at 386 6

Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950)..... 11

Parish v. Kemp, 2008 Tenn.App. LEXIS 752, at * 5 (Ten.Ct.App.Dec. 11, 2008) 6

State v. Biggs, 218 S.W.3d 643, 667 (Tenn.Crim.App. 2006)..... 7

State v. Dubose, 953 S.W.2d 649, 652 (Tenn.1997) 7, 9

RULES

Tennessee Rule of Evidence 401 ..... 2, 7

Tenn. R.Evid.403 ..... 2, 7

Tenn. R.Evid. 404(b) 3, 8

Tenn.R.App.P. 13(d) 4

STATUTE

28 U.S.C. § 1254 (1) 1

APPENDIX

Appendix A – Order, filed April 23, 2010 ..... 1a

Appendix B – Opinion, filed July 7, 2009 ..... 2a

Appendix C – Order, dated September 19, 2008. 29a

Appendix D – Final Judgment, filed May 27, 2008 ..... 31a

OPINIONS BELOW

The order of The Supreme Court of Tennessee at Nashville was filed April 23, 2010, and reprinted in the Appendix to the Petition ("Pet. App.") at 1a. The Opinion of the Court of Appeals of Tennessee at Nashville was filed on July 7, 2009, and reprinted in the Appendix to the Petition ('Pet. App.") at 2a. The Order of The Chancery Court for Lawrence County, Tennessee was filed on September 19, 2008, and reprinted in the Appendix to the Petition ('Pet. App.") 29a. The Final Judgment was filed on May 27, 2008, and reprinted in the Appendix to the Petition ('Pet. App.") at 31a.

JURISDICTION

The Court of Appeals entered its order on April 23, 2010. This Court has Jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

Fourteenth Amendment to the United States Constitution

All persons born or naturalized in the United States, and subjects to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Tennessee Rules of Evidence 401

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Tennessee Rules of Evidence 403

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Tennessee Rules of Evidence 404(b)(As amended by order filed January 31, 2003, effective July 1, 2003)

Other Crimes, Wrongs, or Acts.-Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait. It may, however, be admissible for other purposes. The conditions which must be satisfied before allowing such evidence are:

(1) The court upon request must hold a hearing outside the jury's presence;

(2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record the material issue, the ruling, and the reason for admitting the evidence;

(3) The Court must find proof of the other crime, wrong, or act to be clear and convincing; and

(4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice. [As, amended by order filed January 31, 2003, effective July 1, 2003.]

Tennessee Rules of Appellate procedure 13(d)

Unless otherwise required by statute, review of findings of fact by the trial court in civil actions shall be de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Findings of fact by a jury in civil actions shall be set aside only if there is no material evidence to support the verdict.

STATEMENT OF THE CASE

A. Facts giving rise to this case

The Fourteenth Amendment to the United States Constitution guarantees every person born or naturalized in the United States the right to life, liberty, property, and due process of law. That no state shall make or enforce any law which shall abridge that privilege or immunity; nor shall any state deprive any person of life, liberty, or property without due process of law; nor shall any person be deprived the equal protection of the law.

The Petitioner was accused of unduly influencing his mother into executing a will which provided for him a certain parcel of land, which was to be divided between him and his siblings. The Respondents offered evidence to demonstrate that the Petitioner

was a person of bad character. In so doing the trial Judge permitted the jury to hear that the petitioner had been accused by the authorities in Carroll County Maryland, of violations related to the management of livestock.

The charges had been challenged by his attorneys based on an unlawful search warrant. That matter was taken to the higher court of Appeals in Maryland. At the time of the execution of the will there had been no charges that had gone to any court in Maryland on the merits. At the time of the probate trial, there had been no trial on the merits, so that no procedural antecedent had existed to lay a foundation for the character evidence nor no constitutional substantive safeguards for the Petitioner could be invoked, as the evidence used were idiopathic anomalies improperly admitted.

A Petition to Probate the Last will and Testament of the Petitioner's mother was filed on October 31, 2006. Thereafter, on November 3, 2006 the Petitioners' filed a Petition to resubmit the Will for Probate in Solemn Form, and on December 4, 2006, four of the decedent's children filed a complaint in the Probate Court of Lawrence County, contesting the Will, alleging the existence of a prior Will, and that the November 15, 2005 Will was procured by the undue influence of the Petitioners.

A four day jury trial was held in the Chancery Court for Lawrence County, Tennessee, returning a

judgment in favor of the Respondents. A will may be challenged on the basis that the decedent was subject to the undue influence of another in executing the will. "Courts apply the doctrine of undue influence "when one party, such as a grantee, is in a position to exercise undue influence over the mind and the will of another, such as a grantor, due to the existence of a confidential relationship." In re Estate of Price, 273 S.W.3d 113, 125 (Tenn. Ct. App. 2008) (quoting Brown v. Weik, 725 S.W.2d 938, 945 (Tenn.Ct.App 1983)).

When the trier-of-fact concludes that a close and confidential relationship or relationships exist, a presumption of undue influence arises. It is then the burden of the dominant party, to rebut that presumption by proving the fairness of the transaction by clear and convincing evidence. Matlock v. Simpson, 902 S.W.2d 384 at 386; Gordon v. Thornton, 584 S.W.2d 655, 658 (Tenn. Ct. App. 1979). In order to successfully rebut the presumption a party must establish by clear and convincing evidence "that the transaction was fair and not procured through undue influence." Parish v. Kemp, 2008 Tenn. App. LEXIS 752, at *5 (ten. Ct. App. Dec. 11, 2008). See also In re Estate of Turner, 22005 Tenn. App. LEXIS 552, at *8 (Tenn. Ct. App. Aug. 30, 2005).

Prior to the commencement of the jury trial concerning the validity of the will, the petitioner filed a Motion in limine to prevent the Respondent's from presenting evidence concerning his conviction for ac-

tions concerning the manner in which he operated the family farm in Maryland and how he treated the farm animals. The attorney for the Petitioner argued that the conviction was irrelevant and that any probative value that could be derived from the admission of his conviction was substantially outweighed by the prejudicial effect it would have on the jury. The trial court denied the Motion, but reserved the right to give limiting instructions to the jury concerning the limited relevance of the convictions and in so doing committed an abuse of discretion.

During the time of the trial the court heard arguments which were irrelevant to the case and such evidence was highly prejudicial. Pursuant to Tennessee Rule of Evidence 401, relevant evidence is "evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." Although normally admissible, relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Tenn.R.Evid. 403. "The admissibility of evidence under Rule 401 of the Tennessee Rules of Evidence is a matter within the trial court's discretion and will not be reversed on appeal absent an abuse of that discretion." State v. Biggs, 218 S.W.3d 643, 667 (Tenn.Crim.App. 2006) (citing State v. Dubose, 953 S.W.2d 649, 652 (Tenn. 1997)).

Evidence of "crimes, wrongs, or acts are not admissible to prove the character of a person in order to show action in conformity with the character trait. It may, however, be admissible for other purposes." Tenn.R.Evid. 404(b). Such evidence may be relevant to show motive or intent. Tenn.R.Evid. 404(b), Advisory Comm'n Commt. Before the trial court may permit evidence of a prior crime, wrong, or act, the following procedures must be met:

> (1) The court upon request must hold a hearing outside the jury's presence;
>
> (2) The court must determine that a material issue exists other than conduct conforming with a character trait and must upon request state on the record, the material issue, the ruling, and the reasons for admitting the evidence;
>
> (3) The court must find proof of the other crime, wrong, or act to be clear and convincing; and
>
> (4) The court must exclude the evidence if its probative value is outweighed by the danger of unfair prejudice.

Tenn. R. Evid. 404(b). Assuming these procedures are substantially followed, the trial court's decision concerning the admissibility of the contested evidence is afforded great deference and will only be re

versed if the trial court abused its discretion. State v. Dubose, 953 S.W. 2d at 652.

That the subject matter of the Motion in Limine was to show that the conviction and the charges upon which the conviction was based, occurred months after the execution of the will. Where conduct is alleged to have occurred after the subject matter and the admission of that conduct, denied the Petitioner due process of law. The admission of Petitioner's conviction could only serve one purpose and that was to prejudice the jury against the Petitioner.

B. Chancery Court Proceedings

A will was created on November 15, 2005 by Annette Schisler. The will was contested in Lawrence County Chancery Court, Tennessee, No. 13861-08 by family members alleging Annette Schisler's will was the result of undue influence and furthermore that she was incompetent. At trial before jury, the incompetence issue was unproven and the issue before the jury was undue influence. During a trial held on May 5th through May 8th of 2008 on the will contest, a motion in limine was filed by Petitioner to exclude criminal convictions. The court limited evidence for the purpose of showing conduct conforming with a character trait. The will was set aside as invalid and void and set aside on May 22, 2008. Notice of appeal was filed October 31, 2008 with the court of appeals of Tennessee at Nashville.

C. Tennessee Court of Appeals

Tennessee Court of Appeals affirmed the order of the Chancery Court on October 19, 2009. Petitioner appealed pro se to the Supreme Court of Tennessee at Nashville and Petition was denied April 23, 2010.

REASON WHY CERTIORARI SHOULD BE GRANTED

I. REVIEW IS WARRANTED BECAUSE THE TENNESEE SUPREME COURT REFUSED TO REVIEW THE FAIRNESS OF ALLOWING PREJUDICIAL EVIDENCE OF PETITIONER'S CRIMINAL CONVICTIONS, AS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT.

Months after the execution of Lucille Schisler's will, the Petitioner was charged with crimes involving livestock. Petitioner secured an attorney who addressed the charges in the appellate Court of Maryland. At no time was the Testator aware of the charges nor was there an evidentiary hearing held which disclosed that she had knowledge of the allegations. Further, the Chancery Court did not preclude the use of the allegation but rather, limited use for the purpose of demonstrating a character trait. Petitioner was unable to prevent a jury from hearing such evidence by reason of the judged instruction.

The Appellate Court did not find the procedure to be onerous, or an abuse of discretion, and affirmed.

The application of the Tennessee law was unconstitutional in its application to Petitioner by denying the Petitioner procedural due process as set forth in the 14th amendment of the United States Constitution.

Further, "an elementary and fundamental requirement of due process in any proceeding which to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950). Mullane applies to any litigant who cannot rebut inferences and presumptions where there is a compelling right to due process.

Also, the Supreme Court of the United States held in Fuentes v. Shevin, 407 U.S. 67,82 (1972) that " At times, the Court has stressed the dignitary importance of procedural rights, the worth of being able to defend one's interests even if one cannot change the result. The court also held in Fuentes that the required elements of due process are those that "minimize substantively unfair or mistaken deprivations by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests." Id.

By allowing the admission of evidence of the Petitioner's criminal convictions for the purpose showing a character trait, but at the same time not holding an evidentiary hearing to substantiate the timing of the criminal conviction and no record made to support the foundation of the evidence, the Petitioner's due process rights were violated.

CONCLUSION

Based on the foregoing, Petitioners respectfully submit that this Petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the decision of the Supreme Court of Tennessee at Nashville.

Respectfully submitted,

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